IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5322 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COLD CAP TYRES PVT.LTD.

Versus

ADDITIONAL CHIEF SECRETARY

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Appearance:

1. Special Civil Application No. 5322 of 1990

MR HRIDAY BUCH FOR MR. ND NANAVATI for Petitioner

MR LR PUJARI, AGP for Respondent No. 1

MR DT SONI for Respondent No. 2

RULE SERVED for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 10/09/2004

ORAL JUDGEMENT

1. The petitioner - Private Limited Company has

challenged the order of the State Government made on 2-6-1990, setting aside the order dated 14-6-1984 granting N.A. permission in respect of the land in question under Section 65 of the Bombay Land Revenue Code.

2. The respondent No.3 - Fatesinh was the owner of survey No.294/2 admeasuring 14 guntha of village Madhvas. He applied for permission for N.A. use of the said land before the respondent No.2 - Taluka Development Officer. That permission was granted on 14-6-1984, as per the order at Annexure "B" to the petition, on conditions mentioned therein.

3. It may incidentally be noted that the respondent No.2 was also granted N.A. permission in respect of another parcel of land bearing survey No.288 by order dated 1-1-1985, a copy of which is at Annexure "D" to the petition, for the same purpose. However, no show cause notice was issued in respect of that survey number, but the show cause notice came to be issued on 25th September 1987, as per the copy at Annexure "E" to the petition, only in respect of the survey No.294/2, for which the N.A. permission was granted by order dated 14-6-1984. That show cause notice was opposed by reply dated 4-10-1989, a copy of which is at Annexure "F" to the petition, in which it was specifically contended that the show cause notice was beyond reasonable time and reliance was placed on the decisions of the Apex Court in support of such contention. It was pointed out that the petitioner was to set up a Private Ltd. Company for remoulding tyres and that there was no violation of any rules. The State Government, exercising its powers under Section 211 of the Bombay Land Revenue Code, held that the guidelines issued on 25th March 1981 by the competent authority were not followed by the respondent No.2 while granting the N.A. permission. It was also held that the concerned authorities were not consulted before the permission was granted. The State Government found the action of grant of permission in thirty days as suspicious. It was also found that the permission was obtained with a view to defeat the provisions of Section 63 of The Bombay Tenancy and Agricultural Lands Act, 1948. It was observed that the construction plans were not got sanctioned and therefore, no permission could have been granted for N.A. use. The Additional Chief Secretary held that the powers under Section 211 of the Code could be exercised within reasonable time and the period of ninety days referred to in the decision of the Apex Court was only to be kept in mind.

4. It is clear from the record that there was no show cause notice given to the respondent No.3 on an allegation that the land was being transferred in violation of the provisions of Section 63 of The Bombay Tenancy and Agricultural Lands Act, 1948. The show cause notice was confined to proposing to revise the order of granting permission under Section 65 of the Code. Therefore, the final decision to the extent that it refers to the alleged transfer of the land is beyond the scope of the show cause notice. Furthermore, merely because the officer had taken a decision in thirty days' time, no suspicion could have been raised, particularly when Section 65 of the Code itself contemplated an order to be passed within ninety days, failing which the permission is deemed to have been granted. The revisional authority failed to notice that there was a clear reference in the order granting N.A. permission to the Ribbon Development Rules and the revisional authority itself found that there was no violation of those rules as per the communication subsequently received on 25-8-1988. Though there was a clear mention in the order dated 14-6-1984 that the Circle Inspector's report was received along with the relevant papers, that the applicant desired to set up a Cold Cap Tyres Pvt. Ltd. Company on the land in question, and that, it was ascertained that the land was not required for acquisition nor was there any tenant thereon, has, in disregard of such relevant material, held that the respondent No.2 had made an order without applying his mind and in haste. In the order granting permission, there was a clear reference to the map having been produced along with the application. Even then, the revisional authority has observed that the respondent No.2 had signed the order without applying his mind.

5. The show cause notice was issued on 25th September 1987 in respect of the order dated 14-6-1984 and therefore, it was issued more than three years after the order granting N.A. permission was made by the respondent No.2. The Supreme Court, in State of Gujarat v. Raghav Natha, reported in 10 G.L.R. 992 has, in paragraph 13 of the judgment, held as under :

> "13. It seems to us that section 65 itself indicates the length of the reasonable time within which the Commissioner act under Section 211. Under Section 65 of the Code, if the Collector does not inform the applicant of his decision on the application within a period of three months, the permission applied for shall be

> deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together, it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time, because, after the grant of the permission for building purposes, the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case, the Commissioner set side the order of the Collector on October 12, 1961 i.e. more than a year after the order, and it seems to us that this order was passed too late."

6. It is, therefore, obvious that the respondent No.1 has exercised revisional powers under Section 211 of the Code much beyond reasonable time and in contravention of the ratio of the decision of the Supreme Court in Raghav Natha (supra), as also the other decisions which were pointed out and were referred to in his order. There is no substance in the contention that the order of the respondent No.2 granting N.A. permission should be treated as void ab-initio. Only an irregularity was alleged against that order by the revisional authority, on the ground that the guidelines contained in the circular dated 25-3-1981 were not followed. This is not a case of total lack of jurisdiction on the part of the respondent No.2, nor can the order be said to be void ab-initio, because, the provisions of Section 65 of the Code, admittedly, empowered the respondent No.2 to grant such permission.

7. In the above view of the matter, the impugned order dated 22nd June 1990, at Annexure "A" to the petition, cannot be sustained and is, hereby, set aside. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

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